

ESTTA Tracking number: **ESTTA241320**

Filing date: **10/08/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048271
Party	Defendant Patriarch Partners Agency Services, LLC
Correspondence Address	Patrick J. Orme Chirstie, Parker & Hale, LLP P.O. Box 7068 Pasadena, CA 91109-7068 UNITED STATES pto@cph.com
Submission	Other Motions/Papers
Filer's Name	Patrick J. Orme
Filer's e-mail	pto@cph.com, pjo@cph.com
Signature	/Patrick J. Orme/
Date	10/08/2008
Attachments	R643_Complete_Declaration.pdf (56 pages)(1069567 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

RHINO LININGS, USA, INC.

Petitioner,

v.

PATRIARCH PARTNERS AGENCY
SERVICES, LLC (RAPID RACK
INDUSTRIES, INC.)

Respondent.

Cancellation No. 92048271

Registration No. 1,698,407

Date of Issue: June 30, 1992

**DECLARATION OF PATRICK J. ORMÉ IN
SUPPORT OF RESPONDENT'S OPPOSITION**

Patrick J. Ormé states:

1. I am an attorney with Christie, Parker & Hale, LLP, representing Rapid Rack Industries, Inc., the Respondent in this case.
2. Attached hereto as Ex. A is a true and correct copy of a January 22, 2008 email from David Harlow.
3. Attached hereto as Ex. B is a true and correct copy of a January 22, 2008 email from Joe Dowdy.
4. Attached hereto as Ex. C is a true and correct copy of a January 22, 2008 email from David Harlow.

5. Attached hereto as Ex. D is a true and correct copy of Petitioner's Notice of Deposition.

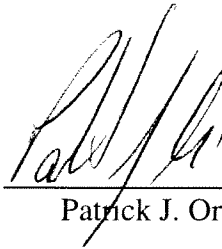
6. Attached hereto as Ex. E is a true and correct copy of relevant portions of the rough draft transcript of Randy Taylor, the Director of Operations for Respondent.

7. Petitioner took the Rule 30(b)(6) deposition of Mr. Randy Taylor on September 26, 2008.

8. Petitioner's counsel demanded access to the computer containing an inaccessible and possibly corrupt database even when I stated that computer may contain attorney-client privilege and attorney work product materials. I offered to provide the computer to a third party technician at Petitioner's cost, but counsel for Petitioner refused.

9. Attached hereto as Ex. I is a true and correct copy of page 6 of the July 11, 2008 Letter from Joseph Dowdy to me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on October 7, 2008, in Pasadena, California.



Patrick J. Ormé

EXHIBIT A

Patrick J. Orme

From: Nancy Childers [nancy.childers@nelsonmullins.com] on behalf of David Harlow [david.harlow@nelsonmullins.com]
Sent: Tuesday, January 22, 2008 11:42 AM
To: Patrick J. Orme; David Harlow; Joe Dowdy
Subject: RE: Rapid Racks v. Rhino Linings

Dave is out of town today. I read this email to him and he asked me to respond to you that he is in agreement with your proposal. He will contact you when he returns to the office -- either late this afternoon or tomorrow.

Nancy Childers
Administrative Assistant
Nelson Mullins Riley & Scarborough, L.L.P.
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
nancy.childers@nelsonmullins.com
(919) 877-3845

From: Patrick J. Orme [mailto:PJO@cph.com]
Sent: Tuesday, January 22, 2008 1:20 PM
To: David Harlow; Joe Dowdy
Subject: Rapid Racks v. Rhino Linings

Dear David and Joe,

My client, Rapid Racks is willing to enter into discussions regarding a concurrent use agreement after seeing the examples of Rhino Linings cabinets that I forward to them.

Before discussing in detail a concurrent use agreement, I wanted to inquire into whether you would agree to a joint suspension of proceedings before the TTAB while these discussions take place. The suspension would cover discovery responses due to you today by Rapid Racks.

If you have any questions, please do not hesitate to call me at (626)795-9900.

Best Regards,
Patrick

The information in this communication and any attached documents contain information from the law firm of Christie, Parker and Hale, LLP that may be confidential and/or privileged. If you are not the intended recipient, or an agent responsible for delivering it to the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete all electronic copies and destroy any hard copies.

=====

10/7/2008

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====

EXHIBIT B

Patrick J. Orme

From: Joe Dowdy [Joe.Dowdy@nelsonmullins.com]
Sent: Tuesday, January 22, 2008 12:54 PM
To: Patrick J. Orme; David Harlow
Subject: Re: Rapid Racks v. Rhino Linings

I will consent to a one day discovery extension while you and Dave work out the suspension.

Sent from my BlackBerry Wireless Device

----- Original Message -----

From: Patrick J. Orme <PJO@cph.com>
To: David Harlow; Joe Dowdy
Sent: Tue Jan 22 15:51:45 2008
Subject: RE: Rapid Racks v. Rhino Linings

Dave,

I look forward to your contact this afternoon. I do have a hearing that starts at 1:30 p.m. Pacific time and that I anticipate will be over by 2:30 p.m. I therefore anticipate being available from 3:00 p.m. Pacific time on.

Patrick

-----Original Message-----

From: Nancy Childers [<mailto:nancy.childers@nelsonmullins.com>] On Behalf Of David Harlow
Sent: Tuesday, January 22, 2008 11:42 AM
To: Patrick J. Orme; David Harlow; Joe Dowdy
Subject: RE: Rapid Racks v. Rhino Linings

Dave is out of town today. I read this email to him and he asked me to respond to you that he is in agreement with your proposal. He will contact you when he returns to the office -- either late this afternoon or tomorrow.

Nancy Childers
Administrative Assistant
Nelson Mullins Riley & Scarborough, L.L.P.
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
nancy.childers@nelsonmullins.com
(919) 877-3845

From: Patrick J. Orme [<mailto:PJO@cph.com>]
Sent: Tuesday, January 22, 2008 1:20 PM
To: David Harlow; Joe Dowdy
Subject: Rapid Racks v. Rhino Linings

Dear David and Joe,

10/7/2008

My client, Rapid Racks is willing to enter into discussions regarding a concurrent use agreement after seeing the examples of Rhino Linings cabinets that I forward to them.

Before discussing in detail a concurrent use agreement, I wanted to inquire into whether you would agree to a joint suspension of proceedings before the TTAB while these discussions take place. The suspension would cover discovery responses due to you today by Rapid Racks.

If you have any questions, please do not hesitate to call me at (626)795-9900.

Best Regards,
Patrick

The information in this communication and any attached documents contain information from the law firm of Christie, Parker and Hale, LLP that may be confidential and/or privileged. If you are not the intended recipient, or an agent responsible for delivering it to the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete all electronic copies and destroy any hard copies.

=====

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====

EXHIBIT C

Patrick J. Orme

From: David Harlow [david.harlow@nelsonmullins.com]
Sent: Tuesday, January 22, 2008 12:56 PM
To: Joe Dowdy; Patrick J. Orme
Subject: RE: Rapid Racks v. Rhino Linings

Patrick, I'm tied up at the moment on a conference call but lets suspend discovery and talk tomorrow. Dave

-----Original Message-----

From: Joe Dowdy
Sent: Tuesday, January 22, 2008 3:54 PM
To: 'PJO@cph.com'; David Harlow
Subject: Re: Rapid Racks v. Rhino Linings

I will consent to a one day discovery extension while you and Dave work out the suspension.

Sent from my BlackBerry Wireless Device

----- Original Message -----

From: Patrick J. Orme <PJO@cph.com>
To: David Harlow; Joe Dowdy
Sent: Tue Jan 22 15:51:45 2008
Subject: RE: Rapid Racks v. Rhino Linings

Dave,

I look forward to your contact this afternoon. I do have a hearing that starts at 1:30 p.m. Pacific time and that I anticipate will be over by 2:30 p.m. I therefore anticipate being available from 3:00 p.m. Pacific time on.

Patrick

-----Original Message-----

From: Nancy Childers [mailto:nancy.childers@nelsonmullins.com]
On Behalf Of David Harlow
Sent: Tuesday, January 22, 2008 11:42 AM
To: Patrick J. Orme; David Harlow; Joe Dowdy
Subject: RE: Rapid Racks v. Rhino Linings

Dave is out of town today. I read this email to him and he asked me to respond to you that he is in agreement with your proposal. He will contact you when he returns to the office -- either late this afternoon or tomorrow.

Nancy Childers
Administrative Assistant
Nelson Mullins Riley & Scarborough, L.L.P.
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
nancy.childers@nelsonmullins.com
(919) 877-3845

From: Patrick J. Orme [mailto:PJO@cph.com]

Sent: Tuesday, January 22, 2008 1:20 PM
To: David Harlow; Joe Dowdy
Subject: Rapid Racks v. Rhino Linings

Dear David and Joe,

My client, Rapid Racks is willing to enter into discussions regarding a concurrent use agreement after seeing the examples of Rhino Linings cabinets that I forward to them.

Before discussing in detail a concurrent use agreement, I wanted to inquire into whether you would agree to a joint suspension of proceedings before the TTAB while these discussions take place. The suspension would cover discovery responses due to you today by Rapid Racks.

If you have any questions, please do not hesitate to call me at (626)795-9900.

Best Regards,
Patrick

The information in this communication and any attached documents contain information from the law firm of Christie, Parker and Hale, LLP that may be confidential and/or privileged. If you are not the intended recipient, or an agent responsible for delivering it to the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete all electronic copies and destroy any hard copies.

=====
=====

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====
=====

EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,)	
Petitioner,)	
)	
vs.)	Cancellation No. 92048271
)	
RAPID RACK INDUSTRIES, INC.,)	
Registrant.)	
)	

**NOTICE OF DEPOSITION OF RAPID RACK INDUSTRIES, INC.
(RULE 30(b)(6) DEPOSITION)**

PLEASE TAKE NOTICE that commencing at 8:30 a.m. PDT on September 22, 2008, at the law offices of Christie, Parker & Hale, LLP, 350 W. Colorado Blvd. Suite 500, Pasadena, CA 91105-1836, Rhino Linings USA, Inc. ("Rhino Linings" or "Petitioner"), by and through counsel, will take the deposition of Rapid Rack Industries, Inc. ("Rapid Rack" or "Registrant") pursuant to Rule 26, 28, and 30 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120. In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, Rapid Rack shall designate one or more officers, directors, managing agents, or other persons to testify as to all matters known or reasonably available to Rapid Rack for those matters designated below.

The deposition shall be taken before a Notary Public or some other officer duly authorized by law to administer oaths. The deponent's testimony shall be recorded by audio,

audiovisual, or stenographic means. Counsel for Rhino Linings shall conduct the deposition via telephone.

If for any reason this deposition is not completed on the date set forth above, the deposition shall be continued from day to day and from time to time until completed. Plaintiff reserves the right to use the deposition testimony as evidence at the trial of this action, to the extent allowed by law.

DEFINITIONS

The definitions set forth in Petitioner's First Set of Interrogatories to Registrant are hereby incorporated by reference and shall apply to this Notice of Deposition.

TOPICS UPON WHICH EXAMINATION IS REQUESTED

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, examination is requested on the following topics:

1. The corporate organization of Registrant.
2. The nature and type of business conducted by Registrant from January 1, 1998 to present.
3. The conception, registration, and maintenance of Registrant's Mark.
4. Registrant's filings with the United States Patent and Trademark Office concerning Registrant's Mark.
5. Registrant's ownership and assignment, if any, of Registrant's Mark.
6. Registrant's use of Registrant's Mark from January 1, 1998 to the present.

7. Registrant's use of Registrant's Mark in commerce from January 1, 1998 to the present.
8. Whether Registrant possesses a specimen of use which demonstrates use of Registrant's Mark in commerce in each calendar year from 1998 to the present.
9. The products in connection with which Registrant uses or has used Registrant's Mark in commerce from January 1, 1998 to the present.
10. The place(s) of manufacturing for the products in connection with which Registrant uses or has used Registrant's Mark in commerce from January 1, 1998 to the present.
11. The specific states of the United States of America and any foreign nations in which Registrant has offered and/or is offering products in commerce using Registrant's Mark in commerce from January 1, 1998 to the present.
12. The channels of distribution in which Registrant has offered products in connection with Registrant's Mark in commerce from January 1, 1998 to the present.
13. The end users of the products offered by Registrant in connection with Registrant's Mark in commerce from January 1, 1998 to the present.
14. Sales revenue received by Registrant from the sale of products offered by Registrant in connection with Registrant's Mark from January 1, 1998 to the present.
15. Registrant's annual advertising, promotion, and marketing expenditures relating to the sale or offering for sale of goods on which Registrant's Mark was used in each year between January 1, 1998 and the present.

16. The manner in which Registrant used Registrant's Mark in connection with any products in commerce, including but not limited to whether Registrant's Mark is used on packaging for the products, whether the products themselves bear Registrant's Mark, and/or whether Registrant's Mark appears on any advertising or other materials in connection with any products from January 1, 1998 to the present.

17. Registrant's use of Registrant's Mark in advertising, including any such use in periodicals, journals, radio and/or television advertisements, and Internet websites from January 1, 1998 to the present.

18. Registrant's use of Registrant's mark in sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying Registrant's Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way from January 1, 1998 to the present.

19. Any discontinuation(s) of the manufacturing, advertising, production, and/or sale of any product offered in connection with Registrant's Mark at any time from January 1, 1998 to the present, the reasons for any such discontinuation(s), and a detailed description of all non-privileged written or oral communications in which any of Registrant's employees or agents participated or of which any of Registrant's employees or agents are aware concerning any such discontinuation(s).

20. Any discontinuation(s) of the use of Registrant's Mark at any time from January 1, 1998 to the present, the reasons for any such discontinuation(s), and a detailed description of all non-privileged written or oral communications in which any of Registrant's employees or

agents participated or of which any of Registrant's employees or agents are aware concerning any such discontinuation(s).

21. Registrant's use of its GORILLA RACK Mark in connection with the manufacturing, advertising, producing and/or selling of work tables (with or without wheels), work benches, industrial shelving, storage racks, component parts for these items from January 1, 1998 to the present.

22. The specific states of the United States of America and any foreign nations in which Registrant has offered and/or is offering products in connection with its GORILLA RACK Mark.

23. The channels of distribution in which Registrant has offered products in connection with its GORILLA RACK Mark in commerce from January 1, 1998 to the present.

24. The end users of the products offered by Registrant in connection with its GORILLA RACK Mark in commerce from January 1, 1998 to the present.

25. The annual sales revenue received by Registrant from the sale of products offered by Registrant in connection with its GORILLA RACK Mark from January 1, 1998 to the present.

26. Registrant's annual advertising, promotion, and marketing expenditures relating to the sale or offering for sale of goods on which Registrant's GORILLA RACK Mark was used in each year between January 1, 1998 and the present.

27. The manner in which Registrant used its GORILLA RACK Mark in connection with any products in commerce, including but not limited to whether the GORILLA RACK is used on packaging for the products, whether the products themselves bear the GORILLA

RACK Mark, and/or whether the GORILLA RACK Mark appears on any advertising or other materials in connection with any products from January 1, 1998 to the present.

28. Registrant's use of its GORILLA RACK Mark in advertising, including any such use in periodicals, journals, radio and/or television advertisements, and Internet websites from January 1, 1998 to the present.

29. Registrant's use of its GORILLA RACK Mark in sales, advertising, marketing and promotional materials or items, including without limitation periodical and trade journal advertisements, brochures, leaflets, print or broadcast advertisements, bulletins, points of purchase materials, trade letters, press releases, or other documents or things relating to or displaying the GORILLA RACK Mark which were distributed or displayed by or on behalf of Registrant to other persons or used in any way from January 1, 1998 to the present.

30. Litigation concerning Registrant's Mark other than the present cancellation proceeding.

31. Litigation concerning Registrant's GORILLA RACK Mark.

32. The complete factual basis for the assertion in the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant on April 9, 2002 that Registrant's Mark was in use by Registrant as of March 26, 2002.

33. The factual information Registrant relied upon in preparing the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant with the United States Patent and Trademark Office on April 9, 2002.

34. The misrepresentations, if any, in the document styled "Combined Declaration of Use in Commerce and Application for Renewal of Trademark" filed by Registrant on April 9, 2002, whether Registrant had knowledge of any misrepresentations, and Registrant's intended purpose in making any such misrepresentations.

35. The complete factual basis for all admissions, denials, defenses, and other statements set forth in Registrant's Answer filed in the present cancellation proceeding.

36. Registrant's responses to Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions propounded by Rhino Linings in the present cancellation proceeding.

37. The documents and things produced by Registrant in response to Requests for the Production of Documents and Things propounded by Rhino Linings in the present cancellation proceeding.

38. Registrant's efforts to investigate whether there was information and/or documents responsive to Interrogatories, Requests for the Production of Documents and Things, and Requests for Admissions propounded by Rhino Linings in the present cancellation proceeding, and the identification of the person(s) employed by Registrant who were responsible for any such investigation(s).

39. Registrant's assertion, in response to any discovery request propounded in the present cancellation proceeding, that "some information relevant to this request may have been destroyed during a flood at Rapid Rack's facilities in 2005" or words of like effect.

40. Registrant's assertion, in response to any discovery request propounded in the present cancellation proceeding, that "much of the requested information is not readily

available due to its location in old, possibly corrupt and no longer readily accessible databases” or words of like effect.

41. The location and condition of any electronic databases which contain, or which Registrant believes may contain, information and/or documents or things responsive to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

42. The location and condition of any files of documents—electronic or hardcopy—which contain, or which Registrant believes may contain, information and/or documents or things responsive to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.


43. Registrant’s efforts to search for information and/or documents or things—stored in either electronic or hardcopy format--which are, or which Registrant believes may be, information and/or documents or things responsive to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

44. The complete factual basis for Registrant’s contention, if any, that it possesses or formerly possessed any information and/or documents or things which showed use or use in commerce of Registrant’s Mark, but which have not been provided in response to the Interrogatories, Requests for Production of Documents or Things, and/or Requests for Admissions propounded by Rhino Linings to Registrant.

45. The identify of all employees or agents of Registrant with knowledge concerning any of the foregoing topics set forth in this Notice, and a summary of the knowledge possessed by each such person.

Respectfully submitted this 3rd day of September, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 
David A. Harlow
N.C. State Bar. No. 1887
Reed J. Hollander
N.C. State Bar No.: 23405
Joseph S. Dowdy
N.C. State Bar No. 31941
4140 Parklake Avenue
Glenlake One, Suite 200
Raleigh, NC 27612
Direct Dial: (919) 877-3800
Fax (919) 877-3799
E-mail: david.harlow@nelsonmullins.com
reed.hollander@nelsonmullins.com
joe.dowdy@nelsonmullins.com

CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by electronic mail and by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

David A. Dillard, Esq.
Patrick J. Orme, Esq.
Christie, Parker and Hale, LLP
350 W. Colorado Blvd., Suite 500
Pasadena, CA 91105-1836

This the 3rd day of September, 2008.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: _____



David A. Harlow
N.C. State Bar. No. 1887
Reed J. Hollander
N.C. State Bar No.: 23405
Joseph S. Dowdy
N.C. State Bar No. 31941
4140 Parklake Avenue
Glenlake One, Suite 200
Raleigh, NC 27612
Direct Dial: (919) 877-3800
Fax (919) 877-3799
E-mail: david.harlow@nelsonmullins.com
reed.hollander@nelsonmullins.com
joe.dowdy@nelsonmullins.com

EXHIBIT E

1 **which examination is requested. Do you see that sir?**

2 A. Yes I do.

3 Q. You see there are a number of topics, I
4 believe one through 45 between page two and 9 listed
5 their. Are you prepared to testify with respect to
6 each of these topics today?

7 MR. ORME: Objection; we haven't -- that's
8 not for him to respond to. I'm happy to tell you which
9 topics hes willing to discuss today.

10 MR. DOWDY: Okay. What topics is he prepared
11 to discuss today?

12 MR. ORME: One.

13 MR. DOWDY: Okay.

14 MR. ORME: Two, six, seven, eight, 9, ten,
15 some of 11.

16 MR. DOWDY: Which parts of 11.

17 MR. ORME: The -- well, you can ask questions
18 and you can find out the extent of his knowledge on
19 that on representing the corporation. 16, 17, 18, 19,
20 20, 21, 22, two three, two four, two five, two six, two
21 seven, 28, 29, that's it.

22 Q. (BY MR. DOWDY): Will someone else be
23 appearing today to testify as to the other topics?

24 MR. ORME: Well, considering the extent of
25 topics that he will be testifying to we will not have

1 another deponent available today. We expect this is
2 going to take most of the day.

3 MR. DOWDY: Okay. Hold on one moment.
4 (pause in proceeding) For purposes of the deposition
5 today Rapid Rack is refusing to [produce|product] a
6 witness for topics three through five, 11 through 15.

7 MR. ORME: Hold on just a moment, Joe. That
8 is not what we're saying. You have listed 45 topics
9 here in your notice of deposition.

10 MR. DOWDY: Yes, sir.

11 MR. ORME: To expect to get through 45 topic
12 of deposition in one day is really unreasonable and to
13 expect one person to be able to testify to all 45 is
14 also unreasonable. You have not given any indication
15 of how long these are going to take so we are not
16 refusing to produce somebody. We have looked at this
17 and said the extent of information that you are seeking
18 goes well beyond a single day of of deposition
19 testimony.

20 MR. DOWDY: I'm just a little you know clear
21 as to why then you didn't move for a protective order
22 if you thought we needed -- in other words I listed and
23 asked somebody to appear today.

24 MR. ORME: And we have produced somebody to
25 appear. That's correct.

1 MR. DOWDY: But not as to all topic. You
2 could have produced more than one person today. I've
3 done those kind of depositions before where there's
4 several people sitting there and we can ask -- and I
5 have not been given any notice today of which topic to
6 prepared to examine somebody on or to cover certain
7 topics as opposed to others.

8 MR. ORME: We have produced somebody who is
9 going to be testifying to nearly half of your topics
10 which are numerous in breadth and scope so we have
11 given -- you know we're producing someone that was
12 responsive to your notice of deposition.

13 MR. DOWDY: With the exception of the half of
14 the topics that you haven't produced somebody for? I
15 mean I guess my question is no one will be appearing
16 today with respect to those other topics that you
17 haven't listed already; is that correct.

18 MR. ORME: That is correct because you
19 haven't indicated how long this deposition will take
20 and given the breadth and scope of of what our witness
21 here today will testify to we believe that will take
22 most of the day.

23 MR. DOWDY: And just in case I'm missing
24 something did I get some kind of letter or something
25 indicating which topics somebody would not be produced

1 MR. DOWDY: Well, I can. I'll strike the
2 question and move on actually.

3 Interrogatory number 16 asks the same question,
4 but with respect to year 2001 list all periodicals,
5 trade journals, radio and/or television advertisements
6 and Internet website where registrant advertised in
7 2001 for each of the products identify in response to
8 interrogatory number 1. And the response to
9 interrogatory number 16, the first paragraph is some
10 objections and then it says, Rapid Racks investigation
11 is continuing and Rapid Rack will supplement this
12 response. Go up to page 19 when and if some
13 information becomes available some information relative
14 to this question may have been destroyed during a flood
15 at rapid racks facilities in 2005. I assume you're
16 going to testify again that the flood was in 2004?

17 A. Correct the flood was in 2004.

18 **Q. Now, with respect to interrogatory number 16,**
19 **do you know whether any information actually responsive**
20 **to interrogatory number 16 was destroyed in that flood?**

21 A. Not personally, no.

22 **Q. Interrogatory number 17 asks the same thing**
23 **with respect to 2002 and if you notice if you look down**
24 **page 19 the same answer is given in the second**
25 **paragraph in response to number 17 and again with**

EXHIBIT F

EXHIBIT F

FILED UNDER SEAL

EXHIBIT G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,)	
Petitioner,)	
)	
vs.)	Cancellation No. 92048271
)	
RAPID RACK INDUSTRIES, INC.,)	
Registrant.)	
)	

**PETITIONER'S FIRST SET OF
REQUESTS FOR ADMISSIONS TO REGISTRANT**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120(h), Petitioner Rhino Linings USA, Inc. ("Petitioner"), hereby serves the following First Set of Requests for Admissions upon the Registrant, Rapid Rack Industries, Inc. ("Registrant"). Registrant is to respond to the First Set of Requests for Admissions set forth below in writing within thirty (30) days from the date of service.

REQUESTS FOR ADMISSION

Petitioner requests Registrant to admit or deny the following unless objected to, in which event the reasons for such objection, including the grounds thereof, shall be stated in lieu of an answer, with the number of the specific Requests to which they are being produced in response.

1. Registrant did not use Registrant's Mark in calendar year 2000.

RESPONSE:

2. Registrant did not use Registrant's Mark in commerce in calendar year 2000.

RESPONSE:

3. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2000.

RESPONSE:

4. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2000.

RESPONSE:

5. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2000 that is self-authenticating as to the date of use.

RESPONSE:

6. Registrant did not use Registrant's Mark in calendar year 2001.

RESPONSE:

7. Registrant did not use Registrant's Mark in commerce in calendar year 2001.

RESPONSE:

8. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2001.

RESPONSE:

9. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2001.

RESPONSE:

10. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2001 that is self-authenticating as to the date of use.

RESPONSE:

11. Registrant did not use Registrant's Mark in calendar year 2002.

RESPONSE:

12. Registrant did not use Registrant's Mark in commerce in calendar year 2002.

RESPONSE:

13. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2002.

RESPONSE:

14. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2002.

RESPONSE:

15. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2002 that is self-authenticating as to the date of use.

RESPONSE:

16. Registrant did not use Registrant's Mark in calendar year 2003.

RESPONSE:

17. Registrant did not use Registrant's Mark in commerce in calendar year 2003.

RESPONSE:

18. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2003.

RESPONSE:

19. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2003.

RESPONSE:

20. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2003 that is self-authenticating as to the date of use.

RESPONSE:

21. Registrant did not use Registrant's Mark in calendar year 2004.

RESPONSE:

22. Registrant did not use Registrant's Mark in commerce in calendar year 2004.

RESPONSE:

23. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2004.

RESPONSE:

24. Registrant cannot produce a specimen of use in commerce in calendar year 2004.

RESPONSE:

25. Registrant cannot produce a specimen of use in commerce in calendar year 2004 that is self-authenticating as to the date of use.

RESPONSE:

26. Registrant did not use Registrant's Mark in calendar year 2005.

RESPONSE:

27. Registrant did not use Registrant's Mark in commerce in calendar year 2005.

RESPONSE:

28. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2005.

RESPONSE:

29. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2005.

RESPONSE:

30. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2005 that is self-authenticating as to the date of use.

RESPONSE:

31. Registrant did not use Registrant's Mark in calendar year 2006.

RESPONSE:

32. Registrant did not use Registrant's Mark in commerce in calendar year 2006.

RESPONSE:

33. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark in calendar year 2006.

RESPONSE:

34. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2006.

RESPONSE:

35. Registrant cannot produce a specimen of use of Registrant's Mark in commerce in calendar year 2006 that is self-authenticating as to the date of use.

RESPONSE:

36. Registrant did not use Registrant's Mark for at least a part of calendar year 2007.

RESPONSE:

37. Registrant did not use Registrant's Mark in commerce for at least a part of calendar year 2007.

RESPONSE:

38. Registrant cannot produce any documentary or demonstrative evidence or proof of use of Registrant's Mark for all of calendar year 2007.

RESPONSE:

39. Registrant cannot produce a specimen of use of Registrant's Mark in commerce for all of calendar year 2007.

RESPONSE:

40. Registrant cannot produce a specimen of use in commerce in calendar year 2007 that is self-authenticating as to the date of use.

RESPONSE:

41. In 2000, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

42. In 2001, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

43. In 2002, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

44. In 2003, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

45. In 2004, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

46. In 2005, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

47. In 2006, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

48. In 2007, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the brand name RAPID RACK.

RESPONSE:

49. In 2000, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

RESPONSE:

50. In 2001 Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

RESPONSE:

51. In 2002, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

RESPONSE:

52. In 2003, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

RESPONSE:

53. In 2004, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

RESPONSE:

54. In 2005, Registrant marketed and/or sold all of its industrial shelving and other storage goods under the mark RAPID RACK.

RESPONSE:

55. In 2006, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK.

RESPONSE:

56. In 2007, Registrant marketed and/or sold all of its industrial shelving and other industrial storage goods under the mark RAPID RACK. .

RESPONSE:

57. In 2000, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

58. In 2001, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

59. In 2002, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

60. In 2003 Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

61. In 2004, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

62. In 2005, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

63. In 2006, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

64. In 2007, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the brand name GORILLA RACK.

RESPONSE:

65. In 2000, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

66. In 2001, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

67. In 2002, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

68. In 2003, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

69. In 2004, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

70. In 2005, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

71. In 2006, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

72. In 2007, Registrant marketed and/or sold all of its consumer shelving and other consumer storage goods under the mark GORILLA RACK.

RESPONSE:

73. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2000.

RESPONSE:

74. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2001

RESPONSE:

75. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2002.

RESPONSE:

76. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2003.

RESPONSE:

77. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2004

RESPONSE:

78. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2005.

RESPONSE:

79. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2006.

RESPONSE:

80. Registrant had discontinued the marketing and/or sale of any products in connection with Registrant's Mark as of 2007.

RESPONSE:

81. Registrant is the owner of the Internet website, www.rapidrack.com (the "Rapid Rack website").

RESPONSE:

82. The Rapid Rack website does not indicate that any goods are being marketed under the Registrant's Mark.

RESPONSE:

83. The Rapid Rack website does not refer to any goods that are being marketed under the Registrant's Mark.

RESPONSE:

84. The Rapid Rack website has never referred to goods being marketed under the Registrant's Mark.

RESPONSE:

85. Registrant resumed sales of products under the RHINO RACK logo in 2007 after several years of not selling products under the RHINO RACK logo.

RESPONSE:

86. There was no basis in fact for the Declaration of Use in Commerce (the "Declaration of Use") filed by Registrant with respect to Registrant's Mark on April 9, 2002.

RESPONSE:

87. The Declaration of Use was made by an authorized agent of Registrant who had knowledge that the Declaration of Use was false.

RESPONSE:

88. The Declaration of use was intended by registrant to induce the United States Patent and Trademark Office to determine that Registrant's Mark should remain alive for having continued in use.

RESPONSE:

89. The Declaration of use did induce the United States Patent and Trademark Office to determine that Registrant's mark should remain alive for having continued in use.

RESPONSE:

90. Registrant's current use of Registrant's Mark, if any, is junior to the senior applications filed by Petitioner with respect to Petitioner's Marks.

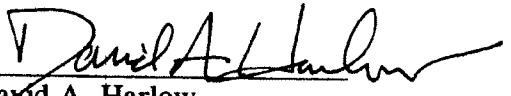
RESPONSE:

91. Petitioner is damaged and will continue to be damaged because the continued Registration of Registrant's Mark stands as a potential bar to Petitioner's ability to federally register and protect the Petitioner's Marks.

RESPONSE:

Respectfully submitted this 12th day of November, 2007.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 
David A. Harlow
N.C. State Bar No 1887
Joseph S. Dowdy
N.C. State Bar. No. 31941
4140 Parklake Avenue
Glenlake One, Suite 200
Raleigh, NC 27612
Direct Dial: (919) 877-3800
Fax (919) 877-3799
E-mail: david.harlow@nelsonmullins.com
joe.dowdy@nelsonmullins.com

CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

Patriarch Partners Agency Services, LLC
227 West Trade Street, Suite 1400
Loan Administration/Rapid Rack
Charlotte, NC 28202

Rapid Rack Industries, Inc.
14421 Bonelli Street
City of Industry, CA 91746

David A. Dillard, Esq.
Christie, Parker and Hale, LLP
350 W. Colorado Blvd., Suite 500
Pasadena, CA 91105-1836

This the 12th day of November, 2007.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

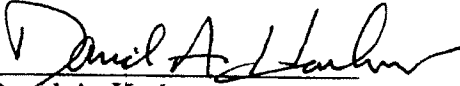
By: 
David A. Harlow
N.C. Bar No. 1887

EXHIBIT H

EXHIBIT H

FILED UNDER SEAL

EXHIBIT I

SPECIFIC DEFECTS—INTERROGATORY RESPONSES. In addition to the foregoing general and recurring defects (which require correction in their own right), nearly every interrogatory response submitted by Rapid Rack is incomplete, evasive, not-responsive, or otherwise improper. We will address each problematic response below.

Interrogatory No. 1. Interrogatory No. 1 seeks all products which Rapid Rack provides, has provided, or intends to provide under Registrant's Mark and the date(s) of first use in commerce and in interstate commerce for each product identified. Rapid Rack has not answered either portion of this interrogatory. Instead, Rapid Rack has evasively and improperly stated that it has used the mark "on the goods identified in [Registration No. 1,698,407]," without providing the specific products in connection with which it has used the mark. Rapid Rack has likewise stated only that it has used the mark in connection with its generalized description of the goods contained in its registration "since at least as early as 1991."

Rapid Rack then proceeds to list eleven "part numbers" for "at least" some of the storage racks bearing the Rhino Rack Mark. It is completely unclear whether the numbers provided are serial numbers for racks themselves or whether they are part numbers for component parts allegedly used in Rapid Rack's storage racks. If the latter, then it is also unclear whether the parts themselves bear the RHINO RACK Mark or whether it is only the complete shelving system when sold together that bears the Mark. Whatever the case, answer to Interrogatory No. 1 is non-responsive for three reasons. First, the products being listed are not identified in a clear manner (such as by name or general description). Second, the answer does not purport to identify "all products" as is requested in the interrogatory and instead appears to provide a non-exhaustive list. Third, the answer lacks dates of first use in commerce and in interstate commerce in connection with Registrant's Mark as is requested in the interrogatory.

Interrogatory No. 2. Interrogatory No. 2 requests the identification of all states in which Rapid Rack provides products under Registrant's Mark. Contrary to Rapid Rack's boilerplate objection, this interrogatory is reasonably calculated to lead to the discovery of admissible evidence, as the responsive information would permit Rhino Linings to contact retailers in each state to see if products bearing the mark were actually distributed. Rapid Rack's response, namely, that "Rapid Rack provides products bearing the mark shown in U.S. Trademark Registration No. 1,698,407 throughout the United States and the world," is incomplete. This answer needs to be supplemented to provide the level of specificity requested in the interrogatory (namely, the identification of each state in the United States in which Rapid Rack has provided products under Registrant's Mark).

Interrogatory No. 3. Interrogatory No. 3 seeks the identification of the individuals who are most knowledgeable concerning the use of Registrant's Mark between 2000 and the present and a description of each such individual's involvement with respect to the Mark. Rapid Rack

CERTIFICATE OF TRANSMISSION AND SERVICE

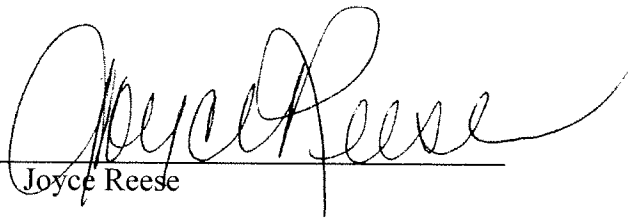
I certify that on October 7, 2008, the foregoing DECLARATION OF PATRICK ORMÉ
IN SUPPORT OF RESPONDENT'S OPPOSITION is being electronically filed with:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

It is further certified that on October 7, 2008, the foregoing DECLARATION OF
PATRICK ORMÉ IN SUPPORT OF RESPONDENT'S OPPOSITION is being served by
mailing a copy thereof by first-class mail addressed to:

David A. Harlow
Nelson, Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One, Suite 200
Raleigh, NC 27612

By: _____


Joyce Reese